



CITY HALL  
LOS ANGELES, CALIFORNIA 90012

August 28, 2000

Ann E. Goode, Director  
Office of Civil Rights  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (1201A)  
Washington, DC 20460

Dear Ms. Goode:

The City of Los Angeles appreciates the opportunity to review and comment on the "Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs" (Recipient Guidance) and "Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits" (Complaint Investigation Guidance) printed in the Federal Register June 27, 2000 (65 FR 39650). The City supports Title VI and programs to ensure that disparate impacts to low-income and minority groups are avoided and/or addressed. The City continues to develop policies and strategies to address environmental justice issues on a local level.

The draft Recipient Guidance and Complaint Investigation Guidance are substantial improvements over the previously released "Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits." However, the proposed guidance must be further clarified and modified to ensure timely resolution of complaints to avoid unintended consequences. Detailed comments and recommended changes to the proposed Recipient Guidance and Complaint Investigation Guidance are attached. The key issues of concerns that remain to be addressed in the guidance include:

- Development of a more detailed methodology to assist recipient agencies in avoiding and addressing potential disparate impacts through integration of civil rights concerns into existing environmental and regulatory programs; and
- Development of a more efficient, predictable, consistent, and timely Title VI Complaint resolution process; and

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- Ensuring full and open participation of all key stakeholders throughout the Title VI complaint evaluation and resolution process; and
- Placing greater emphasis on a recipient agency's underlying permitting processes and on cumulative impacts rather than on the issuance of individual permits and on impacts from individual facilities; and
- Addressing potential effects on local land use planning and decision-making authority.

The City of Los Angeles looks forward to working with the U.S. Environmental Protection Agency (EPA) to resolve these issues so that the communities, recipient agencies, and the permitted facilities can proactively avoid and/or address potential disparate impacts. The City appreciates EPA's attention to our concerns and staff is available to meet with EPA to further discuss our comments as appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "John Ferraro". The signature is fluid and cursive, with the first name "John" and last name "Ferraro" clearly distinguishable.

John Ferraro  
President

Los Angeles City Council

## Attachment

### **City of Los Angeles Comments on the Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits**

- I. DEVELOPMENT OF A MORE DETAILED METHODOLOGY TO ASSIST RECIPIENT AGENCIES IN AVOIDING AND ADDRESSING POTENTIAL DISPARATE IMPACTS THROUGH INTEGRATION OF CIVIL RIGHTS CONCERNS INTO EXISTING ENVIRONMENTAL AND REGULATORY PROGRAMS

#### Public Education to Encourage Early Participation in the Decision-Making Process

The Title VI complaint process should encourage individuals and groups to participate as early as possible in the local planning processes to identify and resolve issues and concerns that have the potential to create disparate impacts. Early stakeholder involvement in the development of policies and/or projects could serve to alleviate any potential disparate impacts.

Because of the complexities of Title VI requirements, the Office of Civil Rights (OCR) should provide Title VI technical assistance and financial incentives to recipient agencies, local governments, and community members. This assistance could take the form of training for recipient agency staff members in Title VI compliance or providing a regional EPA contact or ombudsman familiar with a local area (e.g., southern California) who is available to offer guidance and advice to recipient agencies, local governments and community members. Assistance and other incentives to recipients in designing a comprehensive Title VI program that could help agencies avoid disparate impacts in the planning stages would be particularly helpful.

#### Avoiding Complaints Through EPA's Proactive Review of Recipient Programs

The EPA proposes to review recipient programs and "area-specific agreements" and provide due weight to such programs as part of the Title VI complaint investigation process (*Federal Register* p. 39675). However, such review is afforded only once a Title VI complaint has been submitted to EPA. In areas such as southern California where thousands of environmental regulatory program permits are issued, a more appropriate method of assuring consistent consideration of civil rights issues in all permit actions, not just those appealed to EPA, would be to evaluate the permitting programs as a whole. Recipient program evaluation would assure a more consistent implementation of methodologies designed to identify and address disparate impacts associated with permits as they are reviewed and approved. Consistent application of permitting criteria and enforcement is essential to ensuring non-discrimination in the conduct of recipient agency permitting programs.

Finally, development of "area-specific agreements" would be very time consuming and resource intensive. In the absence of some provision for EPA's review and agreement that such area-specific agreements appropriately consider and address potential disparate impacts, it is unlikely that such agreements would be utilized.

The City therefore recommends that EPA modify the Recipient Guidance to encourage and provide for recipient agencies to voluntarily submit programs and proposed area-specific agreements for EPA review for compliance with Title VI. Such a process would ensure regulatory programs appropriately and consistently address potential disparate impacts and would assist in streamlining the Title VI Complaint evaluation process. EPA could integrate such proactive reviews into its existing oversight and approval responsibilities over various aspects of recipient agency activities (i.e. State Implementation Plans, rules and regulations, monitoring programs, etc.). Areas where a large number of permits are issued by recipient agencies should be given priority for proactive reviews by EPA.

#### Due Weight for Existing Programs

The southern California region has several unique regulatory programs which should be provided “due weight” in the Title VI complaint processes. In addition, several agencies may have oversight over a particular project, each of which have independent responsibilities for review of a project’s appropriateness. Such programs have been developed with significant public participation and are designed to balance several important social factors including costs of compliance, implementation time lines, and environmental and public health benefits. Each program in and of itself should address disparate impacts, but taken as a whole these programs should integrate to further provide the checks and balances appropriate to ensure the identification of disparate impacts and appropriate project justification in light of disparate impacts which cannot be fully mitigated. The City therefore requests that as EPA reviews recipient agency programs for “due weight,” programs administered by other agencies which are considered by the recipient agency, such as the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), in its project review and decision making process also be considered and provide due weight by EPA.

Integration of Recipient Guidance requirements for public participation into the federal NEPA process would minimize costs and/or duplication of effort. However, the integration of civil rights concerns into existing programs may require modification to those programs. For example, public noticing for NEPA documents is generally confined to the *Federal Register* which is not readily available to low-income and minority populations. EPA’s recipient Title VI Guidance appears to require more accessible public noticing requirement to ensure that affected communities are aware of their opportunities to participate in the process. Federal programs such as NEPA should be expanded to include such public outreach consistent with the Recipient Guidance.

#### Consideration of Low-Income Communities

Although Title VI focuses on “race, color, or national origin,” Executive Order 12898 requires review for “minority and low-income populations.” The City supports this type of comprehensive approach to environmental justice. The integration of disparate impact considerations and assessment methodologies into existing regulatory programs, as recommended by the City, would address low-income population concerns. The modification of the Recipient Guidance to provide for EPA’s proactive review of Recipient Agency programs for Title VI compliance would address low-income communities and therefore better reflect the requirements of Executive Order 12898.

#### Benchmarks

The City supports EPA's proposal to utilize regulatory standards as benchmarks for evaluating the significance of potential disparate impacts. The overall purpose of local regulatory and permitting programs are to reduce pollution to achieve health based standards for water quality and air quality (both regional and site specific as through CAA Title III), and to reduce risks associated with hazardous materials. Therefore, if permits are consistently issued based upon the adopted regulatory programs and consistently enforced, disparate impacts should be minimized. Benchmarks must then be inclusive of plans to achieve health based standards within the time frame allowed by law, not just the standard itself. If local environmental regulatory programs are not designed to reduce pollutants to healthful levels, then we urge the EPA to review the federal laws and standards upon which those programs are based.

#### Cumulative Impact Benchmarks

While the City supports EPA's use of existing health based regulatory standards for benchmarks, we caution EPA's use of benchmarks developed for individual permits, facilities, or pollutants in evaluating cumulative impacts. For example the *Federal Register* at page 39680 indicates that a cumulative risk of 1 in 10,000 would be likely to support a finding of adverse impact. However, this benchmark is not reflective of regulatory standards for cumulative risk, but rather is reflective of standards established for individual pollutants. Recent air quality studies in the South Coast Air Basin have indicated that the cumulative health risk associated with ambient concentrations of air toxics are approximately 1 in 1,000 (1,400 in 1,000,000). The use of EPA's urban air toxic program, which is cumulative in nature, would be a more appropriate benchmark than the 1 in 10,000 discussed by EPA in the guidance. Similar caution must be employed when selecting cumulative impact benchmarks for other environmental media.

## II. DEVELOPMENT OF A MORE PREDICTABLE, CONSISTENT, AND TIMELY TITLE VI COMPLAINT RESOLUTION PROCESS

#### Complaint Processing Timeline

The City supports the complaint processing timelines presented in the draft guidance, but is concerned that EPA may have inadvertently created some opportunities for delays that should be rectified. In particular, the informal resolution process should occur in parallel with the formal investigative process, rather than delay commencement of the investigation. OCR must ensure that the established timelines, including completing the investigative process within 180 days, are consistently met. In this way, OCR can ensure that the Title VI complaint processing procedures are clear, certain, and predictable. To that end, the City would further recommend that OCR be provided with sufficient staff and resources to ensure that investigations are completed within the established timelines.

#### Better Integration of the Title VI Complaint Processes

In the draft guidance EPA proposes to process complaints on a single project for different environmental media separately. The draft guidance further indicates that EPA will forward complaints as appropriate to other federal agencies with jurisdiction. As commented on the Interim Guidance, it is essential that a single Title VI administrative process be established to prevent

repeated complaints through subsequent permit actions administered by different regulatory programs receiving federal funds or administered by different federal agencies.

In many cases, projects may require several permits directly from several federal agencies, or agencies receiving federal funds. One such example would be port expansion activities which often require approvals/entitlements by the Army Corps of Engineers, the metropolitan planning organization (which receive federal transportation funds), the Coastal Commission, permits from the local air quality management district, the state or regional water control board, and the State Department of Toxic Substances (DTSC) (which receive EPA funding), fire department clearances, sewer connection permits, (most local government receive federal funds for one program or another), etc. Rather than allow subsequent permit appeals for an individual project with independent review of each complaint, as is currently proposed by EPA, a process which comprehensively addresses the project should be established. A prolonged and repetitive Title VI complaint evaluation and resolution process creates enormous uncertainty for complainants and project proponents. Therefore, EPA must develop a Title VI complaint investigation and resolution process that integrates consideration of other environmental media and other federal agency permitting programs. The draft guidance should be modified to include an integrated project review process to address Title VI complaints against a single project with regard to all environmental permits and non-permitted sources.

Consideration of the project as a whole is also essential to evaluating the justification for the project in light of potential disparate impacts. As indicated by EPA in the proposed guidance, construction of wastewater treatment plants is imperative to public health and safety and has an overall benefit to society. However, EPA goes on to limit project justification to the media over which an agency has jurisdiction (*Federal Register* p. 39677). Therefore, if the air quality permits for a wastewater treatment plant were the subject of a Title VI complaint, the air quality regulatory agency would have no justification for issuing a permit, since air quality is its sole purview and responsibility. Therefore, both project review and project justification should consider the project as a whole.

#### More Detailed Methodology on Appropriately Assessing Potential Disparate Impacts

Consistent, peer reviewed methodologies and evaluation criteria should be established to assist agencies in evaluating potential disparate impacts and their significance early in the process to avoid Title VI complaints. The EPA should develop methodologies that are circulated for public and peer review and comment, for use by local agencies and integration into existing programs.

### III. ENSURING FULL AND OPEN PARTICIPATION OF ALL KEY STAKEHOLDERS THROUGHOUT THE TITLE VI COMPLAINT EVALUATION AND RESOLUTION PROCESS

#### Inclusion of All Stakeholders Throughout the Process

The Title VI guidance should clearly outline the responsibilities and participation opportunities for each of the various parties involved in a Title VI complaint, including the complainant, recipient, permittee, other federal and state agencies, the local municipal government, potentially affected

communities (including low-income communities), geographically proximate and/or similar facilities, the general public, and other interested stakeholders. In conducting a Title VI complaint investigation it is important that all agencies involved in project approval be included. Local governments have project oversight through land-use decisions and therefore would be integral in the complaint evaluation process and would have information and documentation essential to the complaint evaluation process.

In developing voluntary compliance agreements, it is particularly important that there be comprehensive stakeholder involvement. Such voluntary agreements may affect other similar or nearby facilities who are not part of the complaint and could affect the local government, other permitting agencies, and other communities (including low-income communities). Therefore, all potentially impacted parties should be included in the development of such voluntary compliance agreements.

#### Inclusion of All Sources

As indicated by EPA, sources that contribute to cumulative impacts, including non-permitted sources, may also need to be addressed. Therefore, if mobile sources of air toxic sources are contributing to a disparate impact, agencies responsible for controlling mobile sources, such as EPA and the California Air Resources Board, must be included in the Title VI process so that control options for addressing the cumulative impact of all sources can be considered. The need for expanded stakeholder participation to develop comprehensive approaches that address cumulative impacts raises the importance of focusing the Title VI complaint resolution process from individual permits to an agency's underlying permitting program as discussed in greater detail below.

#### Public Outreach

Public education and outreach activities are essential to identifying issues of concern to communities and ensuring that potential disparate impacts are assessed and addressed as appropriate. Low-income and minority populations must be informed not only of projects that may impact their community, but of their opportunities to participate in the entire decision-making process, including Title VI complaints. It is important that all stakeholders be encouraged to participate in project evaluation and environmental permitting processes as early as possible to help identify potential disparate impacts and to develop strategies to avoid those impacts. Such public participation is encouraged through several existing programs, such as NEPA and CEQA. As discussed above, such existing programs should be considered in EPA's "due weight" analyses during Title VI complaint evaluation.

#### Deadline for Filing a Complaint Concerning Public Participation

In the Complaint Investigation Guidance EPA indicates that Title VI complaints regarding the public participation process must occur within 180 days of the alleged discriminatory act in that process (e.g., exclusion from a hearing) (*Federal Register* p. 39670). Such an interpretation does not recognize that, within local governments, public participation is an ongoing open process that is not completed until a final decision has been rendered in a public hearing before the decision making body. Therefore, failures to comprehensively outreach to or otherwise include an individual or

community at any single event in the public participation process could be addressed at subsequent public workshops or hearings. Because the ability to participate in the public process does not end until a final decision is rendered, it is this final public hearing that should signal the opening of the 180-day filing of a complaint, not an individual event which may have occurred and could be corrected through the public participation process as a whole. The City therefore requests that the Complaint Evaluation Guidance be clarified to indicate that the 180-day complaint filing period for public process Title VI complaints commences at the end of the public participation process. Such a process would be consistent with EPA's proposed policy of not addressing complaints until the administrative permit appeal process has been completed (i.e. the action is final).

#### IV. PLACING GREATER EMPHASIS ON AN AGENCY'S UNDERLYING PERMITTING PROCESSES AND ON CUMULATIVE IMPACTS RATHER THAN ON THE ISSUANCE OF INDIVIDUAL PERMITS AND ON IMPACTS FROM INDIVIDUAL FACILITIES

##### Contributors to Cumulative Disparate Impacts

Disparate impacts associated with existing facilities could be the result of the lack of authority of any agency to address a specific pollutant or source, the operation/location of regional facilities, the result of decisions made by other agencies and/or higher levels of government, etc. Furthermore, the baseline conditions, such as demographic and information changes over time, may be the reasons for the newly identified disparate impact. Such situations create complex problems which may require more programmatic solutions, as opposed to the imposition of control strategies at an individual facility. Neither a single facility nor a recipient agency should be held solely responsible for disparate impacts which are cumulative in nature and which are the result of actions and circumstances beyond their control. When investigating disparate impacts, EPA must consider the full range of complex interactions and sources that may contribute to a disparate impact or effect, and the various agencies with oversight over such cumulative sources. Furthermore, EPA must provide "due weight" for programs being undertaken by agencies other than the recipient agency in response to a Title VI complaint involving a cumulative impact.

##### Comprehensive Programmatic Approach

A more programmatic regulatory program review approach, as opposed to a permit-by-permit review/complaint driven process, would be more appropriate. By working to comprehensively address impacts within an area, pollutants from all contributing sources could be comprehensively addressed based upon cost-effectiveness, technical feasibility, specific agency authorities, and reasonable compliance time frames. Such a program is essential to addressing sources which are not permitted, but which substantially contribute to cumulative disparate impacts. In addition, future permits could then be evaluated within the context of contribution to cumulative impacts.

##### Potential for Creating Inequities Between Facilities and Industries

In evaluating cumulative impacts for existing permit renewals, a potential for creating significant competitive differences between facilities exist. For example, where several similar facilities are located in the same geographic area, a complaint against the renewal of one facility's permit could result in that facility being held responsible to undertake facility modifications at substantial costs,



while the other like facilities could potentially continue to operate unaffected, simply because their permit was not challenged or has not yet come up for renewal. Such an individual permit complaint driven Title VI resolution scheme could easily result in inequities between facilities and industries.

## V. LOCAL LAND USE PLANNING AND DECISION-MAKING AUTHORITY IMPACTS AND ISSUES

Local government has traditionally held jurisdiction over land use planning and zoning, and the Title VI complaint review process must ensure that such local control is maintained. The concept of local control over planning is based upon the desire of residents to organize and plan their own communities. In addition, unlike single purpose agencies, such as environmental, transportation, and housing agencies, local governments are responsible for, and must balance, a wide variety of issues. Local government provides essential public services, such as solid resources collection, processing, and disposal, wastewater collection and treatment, electric utility services, potable water delivery, and emergency services at a reasonable cost to the public. In addition, local governments are responsible for balancing economic growth and job needs with open space, recreation, housing, and quality of life needs. Local elected officials must consider and accommodate all of these issues in making land use decisions.

Therefore, it is imperative that the review of any land use decisions, such as that contemplated by the EPA Title VI complaint review process, consider the full range of factors that go into the actions and decision-making processes of local government. We strongly request that the local jurisdiction primarily responsible for approving a project be included in the Title VI complaint review, evaluation, and resolution process.